

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

TIREESE LEWIS, et al.,

)

Plaintiffs,

)

v.

)

COMFORT INN—PHILADELPHIA
AIRPORT, et al.,

)

CIVIL ACTION
NO. 07-cv-1974

Defendants.

)

FILED

JUN 29 2007

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

MEMORANDUM OPINION AND ORDER

RUFE, J.

June 28, 2007

Plaintiffs filed the instant action in the Philadelphia Court of Common Pleas alleging that they were injured by bed bugs while guests at Defendants' hotel. Defendants Ruchi Enterprises, LLC and Terupati LLC filed a Notice of Removal¹ based on diversity jurisdiction under 28 U.S.C. § 1332(a)(1), and Plaintiffs now move to remand the case to the Court of Common Pleas.² For the reasons that follow, the Court will grant Plaintiffs' Motion to Remand.

I. FACTUAL AND PROCEDURAL HISTORY

Plaintiffs were guests at Defendants' Comfort Inn Hotel at Philadelphia International Airport from September 1, 2006, to September 3, 2006.³ While laying in bed, Plaintiffs sustained injuries to the head, body, and extremities as a result of bed-bug bites.⁴

¹ Doc. No. 1.

² Doc. No. 5.

³ Compl. ¶ 7.

⁴ Id. ¶¶ 10, 16.

Plaintiffs filed suit in the Philadelphia Court of Common Pleas alleging one count for Comfort Inn's negligence in maintaining and inspecting Plaintiffs' guest room, two counts for loss of consortium, and one count for punitive damages. Defendants Ruchi Enterprises and Terupati filed a Notice of Removal, and Plaintiffs subsequently moved to remand the case to the Court of Common Pleas. Plaintiffs allege that the parties are not diverse, and that Defendants did not unanimously consent to the Notice of Removal.

II. DISCUSSION

Removal of actions from state to federal court is governed in part by 28 U.S.C. § 1441 and § 1446. Removal is appropriate when a federal court has original jurisdiction over a plaintiff's claim,⁵ and the notice of removal is filed within 30 days from the date on which a defendant receives a copy of the state-court complaint.⁶ Under the rule of unanimity, in order for a notice of removal to be properly before a district court, all defendants who have been served or otherwise properly joined in the action must either join in the removal, or consent to the removal.⁷

A federal court has original jurisdiction over an action where the amount in controversy exceeds \$75,000, exclusive of interest and costs, and the parties are diverse in citizenship.⁸ Here, neither party disputes that the amount in controversy exceeds \$75,000, and Plaintiffs challenge only the parties' diversity of citizenship. Upon review of the record, the Court

⁵ 28 U.S.C. § 1441(a).

⁶ Id. § 1446(b).

⁷ Carter v. Ingersoll-Rand Co., Inc., No. 00-cv-6438, 2001 WL 238540, at *1 (E.D. Pa. Mar. 12, 2001); McManus v. Glassman's Wynnefield, Inc., 710 F. Supp. 1043, 1045 (E.D. Pa. 1989).

⁸ See 28 U.S.C. § 1332(a)(1).

finds that Plaintiffs are citizens of Virginia, that Defendants Terupati LLC d/b/a Comfort Inn-Philadelphia Airport and Ruchi Enterprises, LLC are New Jersey corporations both with a principal place of business in New Jersey, and that Defendant Choice Hotels International, Inc. is a Maryland corporation with its principal place of business in Maryland.⁹ Accordingly, the parties are diverse.

Plaintiffs further aver that Defendants failed to comply with the unanimity requirement in filing a notice of removal because Choice Hotels did not join or consent to Defendants Ruchi Enterprises' and Terupati's May 15, 2007 Notice of Removal. The Court attaches hereto as Exhibit A a true and correct copy of the state-court docket in this matter. The docket reflects that Defendant Choice Hotels was served by certified mail on May 4, 2007. Because service was effected by mail, and because 30 days from May 4 falls on a weekend, Choice Hotels had until June 7, 2007, to consent to removal.¹⁰ Not until June 18, 2007, however, did Defendants Ruchi and Terupati provide the Court with any information that Choice Hotels consented to removal.¹¹ Moreover, Choice Hotels has provided this Court with no independent stipulation or communication verifying their consent to removal, and has not even entered an appearance before this Court. Accordingly, Defendants have failed to consent to removal within the 30-day period. Although § 1446(b)'s 30-day requirement is not jurisdictional, "the time limitation is mandatory and must be strictly construed."¹² "There is nothing in the removal statute that suggests that a district court has

⁹ See Resp. of Defs. Ruchi Enter. to Pls.' Mot. to Remand [Doc. No. 7] ¶¶ 4, 7; Compl. [Doc. No. 1, Ex. A] ¶¶ 1, 2.

¹⁰ See Fed. R. Civ. P. 6(a), (e).

¹¹ See Resp. of Defs. Ruchi Enter. to Pls.' Mot. to Remand [Doc. No. 7] ¶ 6.

¹² McManus, 710 F. Supp. at 1045 (citing Fellhauer v. City of Geneva, 673 F. Supp. 1445, 1447 (N.D. Ill. 1987)).

'discretion' to overlook or excuse prescribed procedures. Removal is a purely statutory right, and . . . removal statutes are to be strictly construed in favor of state court jurisdiction."¹³ Accordingly, because Defendants failed to comply with the unanimity requirement within the 30-day period, the Court herein grants Plaintiffs' Motion to Remand, and this matter shall be remanded to the Philadelphia Court of Common Pleas.

An appropriate Order follows.

¹³ Januszka v. Kemper Ins. Co., No. 94-cv-2242, 1994 WL 236463, at *3 (E.D. Pa. May 26, 1994) (internal citations omitted).

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ORDER

MICHAEL E. KUNZ, Clerk
By _____ Dep. Clerk

AND NOW, this 28th day of June 2007, upon consideration of Plaintiffs' Motion to Remand [Document No. 5], Defendants' Response [Document No. 7], and Plaintiffs' Reply [Document No. 8] thereto, it is hereby

ORDERED that Plaintiff's Motion is **GRANTED** and this case shall be **REMANDED** to the Philadelphia Court of Common Pleas.

The Clerk of Court shall mark this case **CLOSED**.

It is so **ORDERED**.

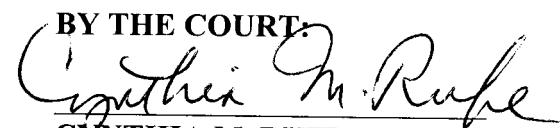
BY THE COURT:

CYNTHIA M. RUFÉ, J.

EXHIBIT A

Civil Docket Report

Case Description

Case ID: 070403996
Case Caption: LEWIS ETAL VS COMFORT INN PHILA AIRPORT ETAL
Filing Date: Wednesday, May 02nd, 2007
Court: MN - MAJOR NON JURY
Location: CH - City Hall
Jury: N - NON JURY
Case Type: 2O - PERSONAL INJURY - OTHER
Status: RMEDC - NOT OF REMOVAL TO US DIST CT

Related Cases

No related cases were found.

Case Event Schedule

No case events were found.

Case Parties

Seq #	Assoc	Expn Date	Type	ID	Name
1			ATTORNEY FOR PLAINTIFF	A2116	METZGER, LAWRENCE G
Address:	TWO PENN CENTER, STE.1204 15TH ST. AND JFK BLVD. PHILADELPHIA PA 19102 (000)567-6616		Aliases:	<i>none</i>	
2	1		PLAINTIFF	@5746846	LEWIS, TIREESE
Address:	1224 WYCLIFF COURT RICHMOND VA 23236		Aliases:	<i>none</i>	

3	1		PLAINTIFF	@5746847	LEWIS, PENNEY
Address:	1224 WYCLIFF COURT RICHMOND VA 23236		Aliases:	<i>none</i>	
4			DEFENDANT	@5746848	COMFORT INN-PHILA AIRPORT
Address:	53 INDUSTRIAL HWY ESSINGTON PA 19029		Aliases:	<i>none</i>	
5			DEFENDANT	@5746850	TERUPATI LLC
Address:	5 N POTTSTOWN PIKE EXTON PA 19341		Aliases:	COMFORT INN-PHILA AIRPORT	
6			DEFENDANT	@5746851	RUCHI ENTERPRISES
Address:	1000 LAUREL OAK RD VOORHEES NJ 08043		Aliases:	<i>none</i>	
7			DEFENDANT	@5746852	CHOICE HOTELS INTERNATIONAL INC
Address:	10750 COLUMBIA PIKE SILVER SPRING MD 20901		Aliases:	COMFORT INN-PHILA AIRPORT	

Docket Entries

Filing Date/Time	Docket Type	Filing Party	Disposition Amount
02-MAY-2007 09:33 AM	CIVIL - COMMENCEMENT OF CIVIL ACTION	METZGER, LAWRENCE G	
Docket Entry:	<i>none.</i>		

02-MAY-2007 09:33 AM	SSCG4 - SHERIFF'S SURCHARGE 4 DEFTS	METZGER, LAWRENCE G	
Docket Entry:	<i>none.</i>		
02-MAY-2007 09:33 AM	CLWST - WAITING TO LIST STATUS CONF		
Docket Entry:	<i>none.</i>		
02-MAY-2007 09:33 AM	CMPLT - COMPLAINT FILED NOTICE GIVEN	METZGER, LAWRENCE G	
Docket Entry:	COMPLAINT WITH NOTICE TO DEFEND WITHIN TWENTY (20) DAYS AFTER SERVICE IN ACCORDANCE WITH RULE 1018.1 FILED.DISCOVERY DEADLINE 1/7/08		
02-MAY-2007 01:27 PM	ACTIV - ACTIVE CASE		
Docket Entry:	<i>none.</i>		
07-MAY-2007 02:37 PM	AFDVT - AFFIDAVIT OF SERVICE FILED		
Docket Entry:	OF COMPLAINT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED UPON RUCHI ENTERPRISES ON 05/03/2007.		
09-MAY-2007 11:47 AM	AFDVT - AFFIDAVIT OF SERVICE FILED		
Docket Entry:	OF COMPLAINT BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED UPON DEFENDANT CHOICE HOTELS INTERNATIONAL INC ON 5-4-07.		
16-MAY-2007 12:29 PM	SHSRV - SHERIFF'S SERVICE		
Docket Entry:	DEPUTIZED SERVICE OF COMPLAINT UPON DEFENDANT TERUPAI LLC D/B/A COMFORT INN BY SHERIFF OF CHESTER COUNTY ON 5- 4-07.		

16-MAY-2007 03:16 PM	RMEDC - NOT OF REMOVAL TO US DIST CT	COMFORT INN- PHILA AIRPORT,	
Docket Entry:	NOTICE OF REMOVAL TO THE U.S. (EASTERN) DISTRICT COURT UNDER 07-CV-1974 FILED.J.M.		